Bergey, et al v. Boy Scouts of Amer

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
06 JUN 19 PM 3:50
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

LINDA BERGEY and JAMES R. BERGEY, SR.,

Plaintiffs,

vs. No. CIV-05-0536 MCA/WPL

BOY SCOUTS OF AMERICA
d/b/a PHILMONT SCOUT RANCH BSA,

Defendant.

REPLY TO RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Defendant, Boy Scouts of America, d/b/a Philmont Scout Ranch BSA ("Philmont"), submits this Reply to Plaintiffs' Response to Philmont's Motion for Summary Judgment. Plaintiffs' Response creates no genuine issues of material fact. The injuries sustained by Plaintiff, Linda Bergey, were the result of equine behavior while engaged in an equine activity. Therefore, under the New Mexico Equine Liability Act, NMSA 1978, §§ 42-13-1, *et seq.*, Philmont is immune from suit for those injuries. As a matter of law, summary judgment should be granted dismissing all claims against Philmont pursuant to the provisions of the Equine Liability Act.

REPLY TO RESPONSE TO DEFENDANT'S STATEMENT OF MATERIAL FACTS

Summary Judgment is appropriate where there are no ***genuine*** issues of ***material*** fact. Fed.R.Civ.P. 56. Materiality for purposes of Rule 56 is defined by the substantive law governing the claims. Only disputes over facts that might affect the outcome under governing law will properly preclude entry of summary judgment. "Factual disputes that

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are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) *Bartell v. Aurora Public Schools*, 263 F.3d 1143, 1146 (10th Cir. 2001). Plaintiffs raise several disputes that are not relevant or necessary to the determination of the summary judgment motion and, therefore, do not create genuine issues of material fact precluding summary judgment in this case.

1. In reply to Plaintiffs' response to Statement No. 10, Defendant states that witnesses have testified that they are unsure whether they had purchased horses from Nancy Burch before. See, e.g., Deposition of Robert Ricklefs, p. 44, lines 20-25. The witnesses have also testified to different opinions regarding whether Spinner was ten years old, twelve years old, or older. However, neither of these disputes are material to the issues presented by the Motion for Summary Judgment.

2. In reply to Plaintiffs' response to Statement No. 12, it is undisputed that Spinner had been packed prior to July 7, 2002. The exact dates on which this occurred are not material to the summary judgment motion.

3. With respect to Statement 13, Philmont does not dispute that Spinner was outfitted as a packhorse prior to being led into the arena where the injury to Linda Bergey occurred.

4. In reply to Plaintiffs' Response to Statement No. 18, it was admitted, for purposes of the Motion, only, that Spinner broke loose. Plaintiffs' "denial" that the testimony regarding the incident is disputed creates no genuine issue of material fact.

5. In reply to Plaintiffs' response to Statement No. 19, it is undisputed that Sara McGatha Shaddix believes Spinner was in the arena when the participants entered.

6. With regard to Plaintiffs' response to Statement No. 23, the fact that Eric Perry cannot recall how many times he had ridden Spinner does not create any genuine issue of material fact.

7. In reply to Plaintiff's response regarding Statement No. 26, it is unclear what Plaintiffs claim to dispute, and Plaintiffs cite to no portion of the record to support that anything is disputed.

8. With regard to Statement No. 28, Plaintiffs, again, do not specify what is being "denied" and does not cite to any portion of the record. Therefore, Plaintiffs do not create any genuine issue of material fact as to this Statement.

9. Plaintiffs, similarly, deny matters set out in Statements 35 and 36. However, Plaintiffs may not rest on denials to create a genuine issue of material fact. Plaintiffs cite to no evidence in the record and, therefore, Statements 35 and 36 are undisputed. Fed.R.Civ.P. 56(e).

REPLY TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS

Plaintiffs also set out their own Statement of Material Facts, but do not explain how they create any genuine issue of material fact. To the contrary, the Plaintiffs' Statement of Material Facts largely sets out undisputed matters that were already contained in Philmont's Statement of Material Facts.

1. Philmont does not dispute the matters set out in Plaintiffs Statements of Material Fact Nos. 12, 13, 14, 15, 19, 20, 21, 23, and 31, which largely restate matters that are set out in Philmont's Statement of Material Facts.

2. In Statements Nos. 16, 17, and 18, Plaintiffs claim that Spinner was unsuitable "as a riding horse" for novices or wranglers. This mischaracterizes the testimony. No witness has testified that Spinner was unsuitable as a riding horse. To the contrary, the undisputed testimony of witnesses is that they considered Spinner unsuitable as a trail riding horse for novice or inexperienced riders but experienced riders had no problem with him. See, Deposition of Ben Vargas, p. 17 and Exhibit A, Trail Ride Report for the week ending 6/23; Deposition of Eric Perry, p. 45. However, Spinner's suitability or unsuitability as a riding horse also is not material since Spinner was not being used as a riding horse at the time of the incident at issue in this case. Philmont does not dispute that, due to Spinner's unsuitability as a trail riding horse for novices or inexperienced riders, Philmont decided to train him as a pack horse.

3. In reply to Statement No. 22, Philmont does not dispute that Betsy Bergey testified she heard someone say to be careful around Spinner. Philmont would note, however, that this testimony is taken out of context. Betsy Bergey further testified that, when she heard this, she was walking behind Spinner. Betsy Bergey was aware that walking behind a horse can cause then to kick sometimes and she would not be surprised if somebody told her to be careful when she was walking behind a horse. (Deposition of Betsy Bergey, p. 25, line 25-p. 26, line 13).

4. In Reply to Statement No. 24, for purposes of its Motion, Philmont has not disputed that Steven Bergey's horse "sat back" when Spinner was brought in the west gate. Philmont would note, however, that Steven Bergey was not with his horse at the time but, instead, was over with his mother and her horse at the time. (Deposition of

Steven Bergey, p. 28, lines 6-7). This does not create any genuine issue of material fact in the case.

5. In reply to Statement No. 25, Philmont does dispute that Sara made this statement. However, for purposes of the summary judgment motion, only, Philmont treats it as undisputed. Philmont also treats Statements Nos. 25 and 27 as undisputed for purposes of its Motion, only.

6. In reply to Statement No. 28, the Court should disregard and strike the opinion testimony of James R. Bergey on the grounds that he is not qualified to give an opinion as to whether a horse is or is not unsafe for a Cavalcade. (Deposition of James R. Bergey, pp. 19-21).

7. In reply to Statement No. 29, Philmont would note that what James Bergey describes in his deposition testimony is that the horses seemed excited to be going on a ride, and that horses in the adjacent pasture were whinnying. This testimony creates no genuine issue of material fact, and, instead, is a description of equine behavior.

8. In reply to Statement No. 30, all of the witnesses who are experienced with horses, including Hugh Ley, have testified that the use of the slicker is an appropriate way to desensitize the horse. There is no actual evidence that the slicker was being used to attempt to calm Spinner.

9. In reply to Statement No. 32, Philmont would note that it is undisputed that Eric Perry was leading Spinner by a lead rope, but that the evidence does not indicate

he was leading him in a circle. However, whether or not he was leading Spinner in a circle is not material to determination of the summary judgment motion.

10. With regard to Statement No. 33, there is no testimony that Spinner had been giving the Wranglers trouble. The cited testimony of James Bergey shows only Bergey's unqualified speculation regarding what the Wranglers were joking about. (Deposition of James R. Bergey, p. 60, lines 5-19).

11. In reply to Statements 34 and 35, Philmont does not agree with the characterizations of the incident testified to by James and Steven Bergey. However, for purposes of its summary judgment Motion, Philmont does not dispute these two statements.

12. In reply to Statements Nos. 36, 37, 38, 39, and 40, Philmont does not dispute that Plaintiff's expert, Hugh Ley, has testified to these opinions. However, as is set out in Philmont's Memorandum in Support of its Motion for Summary Judgment, Hugh Ley has testified that he did not have complete or correct knowledge of the actual facts and based the opinions on incorrect assumptions. Nor does Hugh Ley adequately explain how he arrived at any of these opinions. See, Memorandum in Support, Statements Nos. 30, 32, and 34. Therefore, his opinions are not competent and do not create any genuine issue of material fact. *Harrison v. ICX, Illinois-California Express, Inc.*, 98 N.M. 247, 250, 647 P.2d 880, 883 (Ct.App.1982). See, also, *Lay v. Vip's Big Boy Restaurant*, 89 N.M. 155, 548 P.2d 117 (Ct. App. 1976); *Galvan v. City of Albuquerque*, 85 N.M. 42, 508 P.2d 1339 (Ct. App. 1973).

ARGUMENT

Philmont and Plaintiff do not disagree as to the provisions of the Equine Liability Act. As set out in Philmont's Memorandum in Support, the Equine Liability Act reflects a clear policy that equine operators should not be held liable for injuries caused by equine behavior. Instead, the Act imposes liability only where a cause of action is based on the negligence of the operator. *Berlangieri v. Running Elk Corp.*, 2003 -NMSC- 24, 134 N.M. 341, 76 P.3d 1098, 1110-1111.

In this case, there is no actual evidence that Plaintiff Linda Bergey's injuries were caused by anything other than equine behavior. The only allegations of negligence Plaintiffs offer to support their claims are the opinions of Hugh Ley and of James Bergey. However, as is set out, above, James Bergey has testified he is not well-experienced with horses and has no qualifications in the area of horses, horseback riding, or cavalcades. (Deposition of James Bergey, pp. 19-21). James Bergey lacks any scientific, technical, or other specialized knowledge regarding horses or horseback riding operations, and is not qualified to render any opinions in this case. Fed.R.Evid. 702.

The opinions of Hugh Ley are also not competent to establish any negligence on the part of Philmont. Hugh Ley has testified that his opinions are based on assumptions and that, if those assumptions are incorrect, his opinions would be different. The actual facts also show that Hugh Ley's assumptions are incorrect. (See, Statements of Material Fact Nos. 21, 27, 28, 30, 32, and 34). Hugh Ley's opinions based on incorrect assumptions and inadequate factual foundation are not competent and do not create any genuine issue of material fact. Fed.R.Evid.

Both Hugh Ley and Philmont's expert, Lar Thomas, have testified that the fact that Spinner bolted does not, alone, show any negligence on the part of Philmont. Further, both Hugh Ley and Lar Thomas have testified to equine behavior and the described conduct of the horses at Philmont on July 7, 2002 is exactly the type of behavior described as equine behavior by Ley and Thomas, as well as the Act, itself. (Memorandum in Support, Statements of Material Fact Nos. 34, 35, 36).

Even assuming that the events prior to and at the time of Linda Bergey's injury occurred as claimed by Plaintiffs, these events still show no more than horses engaging in classic equine behavior. There is no credible evidence that creates any genuine issue of material fact that Philmont was negligent. The undisputed material facts demonstrate that Linda Bergey was injured solely as a result of equine behavior while engaged in an equine activity. Therefore, the Court should grant summary judgment and dismiss all claims against Philmont as provided by the Equine Liability Act.

WHEREFORE the Defendant, Boy Scouts of America, d/b/a Philmont Scout Ranch BSA would respectfully request the Court grant summary judgment and dismiss all claims against it with prejudice.

Respectfully submitted,

BUTT THORNTON & BAEHR PC

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I hereby certify a true copy of the foregoing pleading was mailed to all counsel of record this 19th day of June, 2006.

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Alfred L. Green, Jr.
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In The Matter Of:

LINDA BERGEY and JAMES R. BERGEY, SR. v.
BOY SCOUTS OF AMERICA, ET AL.

BETSY BERGEY
April 26, 2006

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Q: Did you do any — have any instructional session at all that evening or that day?
A: I don't remember.
Q: Do you remember when Linda and Steve arrived?
A: They arrived Saturday morning.
Q: So they were there for most of the day as well?
A: Yes.
Q: Then Sunday morning, I guess the session started early; is that correct?
A: Yes.
Q: And what do you recall about Sunday morning? What was done first?
A: We got up and got ready, went to have breakfast around 6:30 a.m.
Q: When did you first go over to Cattle Headquarters?
A: Around 8:00 a.m..
Q: As far as people from Philmont, who do you recall being there?
A: I remember Eric and Sarah being there and a few other people that were Philmont employees, I presumed. I didn't know who they were.
Q: During that day prior to the accident, do

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you recall any other Philmont wranglers or employees besides Eric and Sarah being involved with your group?
A: I don't remember.
Q: Do you recall, for example, any, I'll call them, older individuals, older than their early 20s?
A: I remember seeing older individuals around the corrals, yes.
Q: Did you have any contact with them, or did they have any contact with any members of the group, that you saw?
A: As far as contact, I just remember at one point one of them saying, as we walked past this packhorse that was hitched, to be careful, and we walked around him.
Q: So some older individual said to be careful as you walked around the packhorse?
A: Yes.
Q: Anything other than that?
A: Not that I remember.
Q: Did the packhorse do anything to you or cause you to be alarmed in any way at that point?
A: At that point, no.
Q: Were you walking behind the packhorse when the individual told you that?

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A: Yes.
Q: Did anyone say you have to be careful when you're walking behind any horse, that that can cause them to kick sometimes?
A: I don't remember anybody saying that that day.
Q: Were you aware of that?
A: Yes.
Q: So that wouldn't be something surprising to you, if you were walking behind a horse, for somebody to tell you to be careful about doing that. Is that true?
A: Yes.
Q: Tell me what you recall about, what I will call, the training session or information session that was held first in the morning.
A: I recall Eric and Sarah had a horse, and they were showing us how to bridle it and saddle it, and the basic things like that.
Q: So there was one horse and your whole group there, is that right, for the instruction session?
A: Yes.
Q: Do you recall about how long that lasted?
A: Approximately 30 minutes, maybe 45.

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Q: During this session, did they talk about any of the rules, requirements, or safety procedures when you were on the cavalcade?
A: No.
Q: Was there ever any discussion of that?
A: No.
Q: After the instruction and demonstration on how to saddle and bridle — and I assume brush and feed and so forth; is that right?
A: Yes.
Q: — what did you do next?
A: We were all lined up as far as — I believe this was the next step. We were lined up as far as height and weight and were each taken into an arena to round up our horse.
Q: Now, you say you were taken in to round up a horse. Did you all go together?
A: No, I believe it was just one at a time.
Q: Were you by yourself, or was a wrangler with you?
A: When I went in, Eric was with me.
Q: Do you recall talking to Eric when you went in to get the horse?
A: Yes.
Q: What did you talk about?

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

LINDA BERGEY and JAMES R. BERGEY, SR.,

COPY

Plaintiffs,

-vs- NO: CIV-05-0536 MCA/WPL

BOY SCOUTS OF AMERICA, d/b/a
PHILMONT SCOUT RANCH BSA,

Defendant.

TELEPHONIC DEPOSITION OF JAMES BERGEY, JR.

April 26, 2006
11:30 a.m.
Suite 300S
4101 Indian School Road, Northeast
Albuquerque, New Mexico

PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE, this deposition was:

TAKEN BY: ALFRED L. GREEN, JR.
ATTORNEY FOR DEFENDANT

REPORTED BY: KENDRA D. TELLEZ
CCR #205
Kendra Tellez Court Reporting, Inc.
Suite 1500
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Albuquerque, New Mexico 87102

on the Maine trip. Did she go to the sea base in Florida or the naval visit?

A. No, sir. They basically were all male trips. Because you were, you know, on a little sailboat, 34-foot sailboat, you were all sleeping, you know, together, and you could not do that with a female.

Q. So they weren't co-ed activities?

A. No. You couldn't do those co-ed because you were all -- you know, you had to be together, and the Boy Scout rules wouldn't allow that.

Q. When was the last time you had any involvement with the Scouts?

A. Gosh, I hate to say it, but probably around the time of this accident.

Q. Did your boys have any further involvement after the accident?

A. No, I don't think there was much other involvement after that time period. I may be wrong about that, but I just don't remember any.

Q. And what was your horse experience prior to July of 2002?

A. When I was 10, growing up, probably 9, 10, 11 years old, I went to a Christian camp for like two weeks in the summer, and I took horseback riding there, which they let us feed the horses and saddle the horses and, you know, go on trail rides, that type of thing.

I also had a friend that had a horse when I was growing up, which I rode a couple of times around the pasture, that type of thing. And then we have been on probably three or four different trail rides, you know, different places around the country.

Q. Are these vacation resorts or facilities or something?

A. Yes, it would be the type of thing where you go and the resort would take you on a horseback riding trip, and you'd go out for a couple of hours or half a day, and you'd ride in the mountains or, you know, on the beach, whatever, that type of thing. And the -- usually I would say no more than like half a day, maybe a -- you know, maybe an hour or two. But most of them were like either a two- or three-hour ride. Maybe one of them was over half a day, but that's about it.

Q. Did you ever go out on any hunting trips by horseback?

A. No, sir.

Q. Would you consider yourself an experienced

horseman?
A. No, I really just didn't investigate this well enough, I guess. I was way over my head.
Q. When you say "way over your head," what do you mean by that?
A. Well, just didn't have enough knowledge about horses and horseback riding and had really never had a -- I guess, basically I came to the realization that it was a lot more than what I thought it was when we got out there.
Q. So the cavalcade was more advanced than you expected it to be?
A. Yes, sir.
Q. I assume you've never trained horses or anything like that?
A. No, sir.
Q. Have you ever worked with a packhorse before?
A. No, sir.
Q. And had you ever been to Philmont prior to 2002?
A. No, sir.
Q. Did you have any part in organizing the trip?
A. No, sir.

again, you know, reared back real hard away from him, like -- well, you know how they do. It's hard to describe unless you see it. But he just yanked back and kept yanking back until he broke loose.

Q. Now, I want to go back here a second. When you said in your statement, "Which one of us is going to lead the horse," you said, a "wrangler joked as to which one of us is going to lead the horse." That wrangler was talking about other wranglers? They weren't talking about participants; is that right?

A. Well, it was a joke like, you know, "Which one of you guys are going to do it?" I mean, in a joking way, you know, because they had trouble with the horse, you know, off and on all day -- or all morning, I guess, basically. That was kind of -- you know, I just took it as a joke, as to this was kind of ridiculous that any one of us would be able to handle that horse.

Q. But this wasn't Eric; is that right?

A. Oh, no, not Eric. He didn't say that.

Q. So one of the other wranglers made this comment, and then Eric went up to get the horse; is that right?

A. Right.

In The Matter Of:

LINDA BERGEY and JAMES R. BERGEY, SR. v.
BOY SCOUTS OF AMBERICA, ET AL.

STEVEN J. BERGEY
April 23, 2006

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A: Well, they brought the horse that hit my mom's horse into the gate next to my horse.
Q: But you were down by your mother's horse; is that right?
A: Yes.
Q: Okay. Now, they brought in the packhorse. Is that the one you're talking about?
A: Yes.
Q: Did it have a pack on it?
A: At that point in time, I can't remember if it had a pack on it or not.
Q: Was the horse by itself or was there somebody with it?
A: The horse — somebody was leading the horse.
Q: Was the person leading the horse Sara or Eric?
A: I don't know.
Q: So someone is leading the packhorse in through the gate next to where your horse is tied; is that right?
A: Yes.
Q: Is there anyone with your horse?
A: I believe — let's see. Everybody — it was me — I was still next to my mom. Nobody was with my horse. And I believe Jay, Ryan and Ross were all still there next to their horses right next to where the packhorse was getting led.
Q: What happened at that point?

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A: At that point in time, as soon as the packhorse came through the gate next to my horse, it seemed as though as soon as my horse saw that horse, my horse did not want anything to do with that horse. It stood up almost and sat down on its back legs, and I either thought that the rope was going to snap or the fence was going to come up at that point. I was so happy I was standing next to my mom when that happened. I was really happy. And then they led the horse away after that.
Q: Where did they lead it?
A: They took the horse around — if you look at the cattle headquarters map, they took the horse around down to the other end and brought it to the other gate. Do you see where that gate is?
Q: When you say "they," is it more than one person?
A: I say they. They is the person who was leading the horse. It's an unknown person. I can't remember.
Q: Okay. So they led him down along the dotted lines, and what happened next?
A: They brought him through the gate, and they were either — they were trying to tie him up. The horse got away and was running into the horse down at the other end, that was tied up along the fence, which are the dash marks on the map, those little dash marks. And he started running to those horses. Now, down at that end is where I recall a couple of

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the younger kids were located.
Q: Do you know where the horse — you said they tried to tie him up. Where was that?
A: Well, I mean, I believe the person was bringing the horse into the corral so he could tie him up in the corral next to the other horses.
Q: So you didn't actually see him try to tie him up someplace.
A: No. All I heard was — what happened from that point on, I stood next to my mom, and all I heard at that point was "Get on the fence." And I saw the other horse running from the person who had been holding him, that was holding him.
Q: Do you know where Eric or Sara were at this time?
A: No.
Q: Do you recall any other Philmont employees in the corral at this time?
A: Yes. I mean — well, I don't remember at that point. I would assume there would be the ones that were trying to get him, the ones that were trying to recapture him after he got away, but I don't personally recall anybody like being there. It's like a blur.
Q: Now, you said you were still up by your mother; is that right?
A: Yes.

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Q: And the packhorse would have then been several horses away from you-all; is that right?
A: Yes.
Q: And they told you to get over the fence, correct?
A: I believe what I heard them say was "Get on the fence," just to get away from the horse that was running.
Q: And you said it was running?
A: I believe — he got away and, I mean, he was hitting other horses.
Q: How was he hitting them?
A: Like kind — it's kind of hard to explain. But he got away. He was pretty — I guess he was running.
Q: Well, how were the wranglers able to catch him if he was running?
A: Well, I mean, he must not have been going that fast, but he still got away. He still was able to get away.
Q: When you say hitting other horses, do you mean he ran into other horses, or what do you mean?
A: Yes. He collided with other horses after he got away.
Q: So then you said they were able to catch him, right?
A: Yes. They were able to catch him.
Q: And what happened at that point?

Transcript of the Testimony of **Eric Perry**

Date: March 6, 2006
Volume:

Case: Bergey v. Philmont

Printed On: 3/10/2006

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met the horse, saddled the horse called Spinner?
A. Yes, I had.
Q. Tell me what your history with Spinner was.
A. During the initial training and certification, I had ridden Spinner in the roping arena. I don't remember the number of times.
Q. As a riding horse?
A. As a riding horse.
Q. Did you have any problem with him?
A. No problem.
Q. Did you ride him with other horses?
A. I did.
Q. As if you would in a cavalcade?
A. I rode him as if I were riding in a trail ride line.
Q. Did you have any experience with Spinner walking fast or slow, getting out of line where you had to keep him in line?
A. I had no experience with him walking out of line. I had an experience where he would twist in line and so he would try to walk sideways. I found that that was uncomfortable, but not -- not unmanageable.
Q. So when did Spinner, to your knowledge, become a pack horse?
A. I don't know.

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Q. When you came to this particular cavalcade 706-CX-02, were you surprised to see Spinner as a pack horse?
A. No, I was not.
Q. Was it just normal course that he just -- no pun intended -- but he drew the short straw and became a pack horse for this cavalcade?
A. I did not know the reasons behind why he had become a pack horse.
Q. But that's the first time you saw him as a pack horse?
A. No.
Q. Had you seen him as a pack horse before?
A. Yes.
Q. What other -- at the other three cavalcades?
A. No.
Q. Where had you seen him as a pack horse?
A. I had seen him as a pack horse at Cattle Headquarters.
Q. When?
A. On one of the trail rides prior to July 7th -- July 06.
Q. With somebody else or with Sara McGatha?
A. With someone else.
Q. I think that was my earlier question. I may have

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misstated it to you. So he was used as a pack horse with maybe one or the other cavalcades prior to July 6 that you had seen him being used as a --
A. No.
Q. Explain it to me because I'm confused now.
A. Okay. He was utilized as a pack horse for a trail ride out of base camp headquarters.
Q. What is the difference between a trail ride and a cavalcade?
A. A trail ride is a two- to three-hour ride that our participants go on to have a Western lore experience, and they are taken out of any of the horse camps, including Cattle Headquarters. From Cattle Headquarters, they would take out trail rides from the Philmont Training Center. Spinner was packed as a pack horse sometime prior to the arrival of that cavalcade, and he was led by a wrangler or horseman. I don't know who he was led by.
Q. On another horse, with a rope on, so to speak? You have one guy on a horse here leading the horse?
A. That's correct.
Q. Not walking with him with a rope?
A. That's correct.
Q. Did you hear anybody talk about having problems with Spinner, either Cattle Headquarters or anywhere

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else at Philmont?
A. No.
Q. Had Spinner -- Spinner wasn't around the summer of 2001 when you were up there, to your knowledge?
A. No.
Q. If Spinner had caused problems at another camp, say Ponil, Clarks Fork, Beaubien, would that word have gotten down to Cattle Headquarters somehow?
MR. GREEN: I object to the form.
Q. (By Mr. Casey) If you know.
A. I don't know.
Q. When was the first time that you worked with Spinner?
MR. GREEN: As a pack horse?
Q. (By Mr. Casey) As a pack horse. You already told me you rode him; right? That was before July?
A. Correct.
Q. You had no trouble with him riding other than going sideways?
A. Correct.
Q. Did you report that to anybody, that he was riding sideways as a saddle horse?
A. When I rode him as a horse?
Q. Yes.
A. And he rode sideways? It is typical that Ben

Transcript of the Testimony of **Robert Ricklefs**

Date: April 4, 2006
Volume:

Case: Bergey v. Philmont

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you. It just can't be done.
Q. Did you come to any conclusion as to whether -- strike that.
Did you come to any conclusion as to what caused Spinner, the pack horse in question, to pull away from Eric Perry while Eric was mounting his horse?
A. I have no conclusion.
Q. You didn't see it happen?
A. No.
Q. So you don't really have a good basis for making any opinion on that; is that correct?
A. That's correct.
Q. What about -- you mentioned training that the wranglers go through for pack horses. What about sacking a horse? Do you understand what I'm saying by sacking?
A. Yes.
Q. I hope I do, too. Tell me what kind of training you would give them with regard to -- you or somebody working for you would give them training about sacking a horse.
A. We would relay, I'm sure, that sacking a horse is part of the training procedure to get the horse used to other objects, flapping objects, slickers, tarps. It's done always with a pack horse or even a saddle horse.

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Q. You use it to calm them down; right?
A. Pardon me?
Q. Calm them down.
A. I wouldn't say calm them down. It is to get them used to things that they may not see or be near all the time.
Q. How about putting blinders on them?
A. It is a technique that is done sometimes.
Q. What's the purpose of that?
A. Very rarely. It would be a horse that's -- won't let you near him. This horse did not need blinders.
Q. Now, did this horse -- "this horse" being Spinner?
A. Yes, sir.
Q. Do you know why this horse was on the north corral line of the roping arena with the slicker over his head?
MR. MARTINEZ: I object to the form of the question. Incorrect statement of facts.
A. No.
Q. (By Mr. Casey) You have no idea?
A. The horse was being prepared to go on this cavalcade to be led on this circle ride that they were preparing to lead.
Q. So you would do that to all pack horses, put a

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slicker over their head? Is that the training that is done?
A. Yes.
MR. MARTINEZ: I object.
Q. (By Mr. Casey) The purpose of that is to what?
A. Like I said, to get them used to things.
Q. Used to what?
A. Slickers, tarps.
Q. Spinner, as I understand it, had not been used but maybe one time before as a pack horse?
A. I understand that he was used two or three times prior to this day.
Q. Here at Philmont?
A. Yes.
Q. You know where he was purchased from; right?
A. Right.
Q. Nancy Burch?
A. Yes.
Q. How about at Nancy Burch's place? Was the horse ever used as a pack horse?
A. I don't know.
Q. Who bought the horse from Nancy?
A. Ben.
Q. You didn't participate in that purchase?
A. I was not here that day.

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Q. Did you have any idea of the history of that horse before it was purchased?
A. Not particularly.
Q. Do you know Nancy Burch?
A. Yes.
Q. Do you know her pretty well?
A. Not real well.
Q. She has her own operation riding horses over in Angel Fire area, Eagle Nest area?
A. That's right.
Q. Have you ever been over there to her property?
A. Yes.
Q. How many times?
A. Pass by it many times. I've stopped --
Q. Been to it?
A. Maybe twice.
Q. To do business with her?
A. No. To see -- we talked on the phone. I have no reason to use her facility.
Q. Have you ever purchased horses from her before, to your knowledge? You being for Philmont?
A. I don't recall that we had.
Q. So this is maybe the first time you had purchased horses from her?
A. That may be right. I don't know for sure.

Transcript of the Testimony of **Ben Vargas**

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is just that we have enough wrangler horses in the program.
Q. But they are --
A. They handle a little better.
Q. Better?
A. Like you said, a little more peppy. They handle better.
Q. Then the wrangler's horse is a real working horse? It is going to be a cutting for the cattle if you need that or herding the other horses, whatever?
A. Yes. Just basically herding other horses.
Q. More experienced horse?
A. Yes.
Q. And then the horses that you use for trail -- I mean, pack horses, tell me how you classify those.
A. Again, it's -- we see them rode. We ride them in the arena. It is a real -- you know, it is a small area, but they just don't respond. You know, you just don't feel that they are quite ready to put a beginner on, a novice rider or a wrangler. So we will take them and try them as pack horses. And it is not a demotion. It is just --
Q. They get the same pay.
A. Part of the qualification, they are carrying weight. They walk behind a horse or beside a horse, and

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we need two dozen pack horses or better. Once they prove themselves they are going to be pack horses, that's where they stay.
Q. It is a question of training?
A. Yeah. You know, it is just -- if we don't feel that the horse is ready for anyone to ride, then we will try them as a pack horse. If he don't work there, then he's not part of Philmont.
Q. And you and who else participates in that classification of these horses?
A. Well, I would say Chuck Enloe and Rod some and Bob some.
Q. They report to you?
A. You know, there's always at least three of us -- at least two of us in the arena when they are riding those horses. That's part of their training process. It's -- we are watching the wranglers catch a horse, ride them, saddle him, mount, dismount, and at the same time you are watching those horses just try to figure out where they are going to fit in.
Q. Watching the horsemen, also, the summer staff horsemen?
A. It is all -- all the training is done together. We're not isolating the horsemen from the wranglers. The horseman works at the slowest person's pace as well.

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Q. So does that function as well for the horses, if you have horses that are real qualified but you've got one that's dragging its feet, so to speak? You work with that horse to get them up to the level of the other ones?
A. At that point, I don't think there's much you can do for a horse like that. He's going to fit in as a trail horse and all he's going to do is walk. You know, we will try to spank him a little bit just to try to make him keep up, but once he's assigned his duty, he's going to be a trail horse and --
Q. Did you ever consider Spinner for a trail horse?
A. No, not right off, no. We -- we -- I sent him to Clarks Fork to be a working horse knowing that -- watching him being rode in the arena at a walk that he would try to get out of line. So the instructions with Spinner were "Ride him. If there's an extra wrangler on a horse ride or at camp, put him on Spinner, put him in line, but don't let the participants ride him."
Q. That would be the summer staff wrangler; right?
A. That's right.
Q. But it could also be Chuck Enloe or Rod Taylor or you if you were around?
A. It could be, but there's so much -- there's -- you know, you've got four cavalcades out and three other

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horse camps going on. It is hard to focus on just that one camp. We're doing other things. Rod is taking care of the cattle. We're supplying feed and stuff for the cavalcade program. You always have horses that are sick, crippled, sore that we need to pick up, bring down and doctor. We're not just focused on this one camp.
Q. Yeah. So it depends on the duty that day where your permanent staff is going to be, whether it is taking feed up to one of the other camps, Beaubien or to Clarks Fork, or bring the horse to the vet or working in the corrals at Cattle Headquarters. You always try to keep an eye on things in the process?
A. That's right.
Q. You leave it up to the wranglers and the horsemen and summer staff to manage the cavalcades, but you watch them as you're doing your other duties as I understand it?
A. Okay. Well, the cavalcades and the camp horsemen are two different deals.
Q. Separate things?
A. We have cavalcades that go through some of those camps, but the camp horseman, he's there for the summer. That's his camp. He's got the same string of horses. He's going to have wranglers rotate ~~them~~ through that camp. He won't have the same hands there all summer.

TRAIL RIDE REPORT

CAMP Clarks Fork

REPORT FOR WEEK ENDING 6/23

TOTAL RIDERS 190 TOTAL SCHEDULED 217

LOG BOOK SUMMARY I had good rides throughout the week. I am still having trouble with Spinner, Sombero and Frank. I have been using staff to work them, but they still cannot be trusted enough for an Inexperianced person.

INCIDENTS One Incident involving monkey. Riders fault 100%. "Incident form inclosed"

TREATED INJURIES ——— / I had two Wranglers. Tom Bush and Mike Church go to the health lodge for Stomach f

CRIPPLED OR UNSOUND HORSES Honey Bun is still an evil peice of work. Crow has stopped his limp and Eric is bring him back to full work load slowly. Robin is beat up every evening and its getting hard to use him.

TACK REPAIRS

2 headstalls (no new parts needed). 5 or so Reigns repaired.

We found an Blevins slide in one of the desk drawers and we fixed 1 Brodhom Cadilac. So we now have all saddles.

Hay Report	Water
6/24 - 78 bails at feeders 5 left at the	Creek is still sca with lots of good w The house is flow fine

RLR/mv
06/20/90

4/24/02 Jonathon Porter